



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

CHAN

January 7, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Scott McMaster**
Tax Registry No. 893367
83 Precinct
Disciplinary Case No. 2010-2997

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on May 15, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-2997

1. Police Officer Scott McMaster, on or about June 26, 2009, left the confines of his assigned command and the five boroughs on personal business without authority or permission to do so.

P.G. 203-05, Page 1, Paragraph 2

PERFORMANCE ON DUTY

2. Police Officer Scott McMaster, on or about June 26, 2009, wrongfully failed to obey the lawful orders given by Sergeant Alton Walker, Desk Officer at the 83 Precinct, and Sergeant Nicholas Van Dyke, 83 Precinct Patrol Supervisor, to remain at the 83 Precinct and to subsequently report back to the 83 Precinct after leaving the confines of the command and the five boroughs.

P.G. 203-03, Page 1, Paragraph 2

COMPLIANCE WITH ORDERS

3. Police Officer Scott McMaster, on or about June 26, 2009, transported an unauthorized civilian in a Department vehicle.

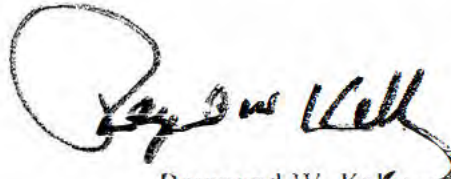
P.G. 206-03, Page 1, Paragraph 18

VIOLATIONS

In a Memorandum dated July 31, 2012, Deputy Commissioner Martin G. Karopkin found Respondent Guilty of Specification Nos. 1, 2, and 3 in Disciplinary Case No. 2010-2997. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

DISCIPLINARY CASE NO. 2010-2997 POLICE OFFICER SCOTT McMASTER

With due consideration of all of the evidence and the totality of the circumstances, in addition to noting Police Officer McMaster's otherwise good service record with the Department, the disciplinary penalty shall be reduced, to a forfeiture of ten (10) Vacation days.

A handwritten signature in black ink, appearing to read "Raymond W. Kelly". The signature is fluid and cursive, with a large loop at the beginning and a long, sweeping tail that extends to the right.

Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

July 31, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Scott McMaster
Tax Registry No. 893367
83 Precinct
Disciplinary Case No. 2010-2997

The above-named member of the Department appeared before me on May 15, 2012, charged with the following:

1. Police Officer Scott McMaster, on or about June 26, 2009, left the confines of his assigned command and the five boroughs on personal business without authority or permission to do so.

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P.G. 203 03, Page 1, Paragraph 2 – COMPLIANCE WITH ORDERS

3. Police Officer Scott McMaster, on or about June 26, 2009, transported an unauthorized civilian in a Department vehicle.

P.G. 206-03, Page 1, Paragraph 18 VIOLATIONS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent is a 25-year member of the Department and has been assigned to the 83 Precinct for 24 years. Respondent's current assignment is patrol and he has made over 500 arrests in his career. On June 26, 2009, Respondent was assigned to patrol in a marked patrol car (RMP) with his partner, Police Officer Sabrina Fulford.

During the course of Respondent's tour, Fulford received a phone call that her six-year-old daughter was having a severe asthma attack. Respondent testified that he did not know who called Fulford, but he remembered she was "[h]ysterical" while on the phone and she stated "she had to get home, she had to get her daughter." After the phone call, Respondent explained, they went to the station house so Fulford could take lost time. At the station house, Respondent said they asked the desk officer, Sergeant Walker, to grant lost time to Fulford. Walker responded by asking Respondent "to tell her to call 911, and that we will take care of it from there." Respondent stated he was expecting the sergeant to grant Fulford lost time and allow him to take her home because there was an emergency. Respondent said he was not asking for lost time because he was going to come back after dropping Fulford off.

Respondent testified he was not aware how Fulford reacted when Walker told her to call 911 and wait because she was off to the side of the desk speaking on the phone. Respondent said he and Fulford then went to the RMP, notified the radio dispatcher that they were "out at the station house [on an] administrative [assignment]." Respondent then drove "into [REDACTED] to where her daughter was staying." Respondent noted the residence where Fulford's daughter was suffering the asthma attack [REDACTED] [REDACTED] Respondent said it took him 15 to 20 minutes to get from the 83 Precinct to the house [REDACTED]. Respondent testified that he drove the RMP because Fulford was very upset and would have probably gotten into an accident.

As soon as they arrived at the location, Fulford got her daughter out of the house, put her into the RMP and they transported her to the nearest hospital, a couple of miles away [REDACTED]. Respondent said as soon as he arrived at the hospital he called the precinct to tell them where they were and was told to come back to the precinct.

Respondent explained he returned to the precinct within 20 minutes and reported to Walker at the desk. Walker told him to get a hold Fulford and get her back to the command. After getting a ride to the precinct from her sister, Fulford and Respondent resumed patrol. They handled two jobs and were then told to report back to the precinct, at which time Fulford was granted lost time and Respondent was reassigned to the cells. Respondent said, "[W]e were told that we shouldn't have did what we did and left the command, and I apologized and I thought that was the best to do at the time of the situation that we had."

After the conversation, Respondent said he thought everything was resolved and the desk sergeant told him "that it was over, it's a misunderstanding and that was going to be it." Respondent stated in the days that followed, he received a foot post for the next three months. It was unusual to be put on a foot post because the last time Respondent was assigned to a foot post was ten to 15 years ago. Respondent understood the foot post to be a punishment for what he did and he did not complain about being on a foot post and he did not have any problems with that assignment.

About 15 days after the incident, Respondent was subjected to an official Department interview. He had accompanied Fulford to pick her daughter up because, "I just felt it was an emergency, you know, she was going to go any way, so I might as well have gone myself and helped her out."

On cross-examination, Respondent agreed that he has been with the Department about 25 years and he understands the importance of the chain of command and obeying orders within the Department. Respondent was unsure if he took the train or drove work on the day of the incident, but he was sure Fulford did not drive to work that day.

Respondent acknowledged that the situation they were in was an emergency and he traveled [REDACTED] with the RMP's lights and sirens on. It took them 20 minutes to get from the command to the residence where Fulford's daughter was at with the lights and sirens on in a marked RMP. Respondent agreed that he did not see Fulford call 911 at any time while in the precinct or in the vehicle while going to the residence. Respondent confirmed that he broadcast over the Department radio, before leaving the stationhouse, "That we were going to be out at the house." He did not remember if he used the code "10-61" (precinct assignment).

Upon questioning by the Court, Respondent said the address of the 83 Precinct is 480 Knickerbocker Avenue and it is located on the Queens and Brooklyn border.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). The Respondent was appointed to the Department on July 28, 1987. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has recommended a penalty involving the loss of 20 vacation days. Respondent, who has pled guilty and acknowledges his misconduct believes that a lesser penalty would be appropriate; his attorney has suggested the loss of 10 vacation days.

The three specifications encompass two basic incidents; misuse of a Department vehicle and failure to obey orders.

Prior penalties for misuse of a Department vehicle and having an unauthorized person in the vehicle have been on the order of ten days. In *Disciplinary Case No. 75788/00*, a six-year member with no prior disciplinary record forfeited ten vacation days for traveling to another precinct while on duty to get his watch repaired, failed to make an Activity Log notation covering the trip, and failed to notify the precinct before leaving his assignment. In *Disciplinary Case No. 81054/05*, a 19-year member with no prior disciplinary record forfeited 13 vacation days for using a Department computer for non-Departmental purposes, being absent from post to attend personal social functions, failing

to perform his assignment, and transporting civilians in a Departmental vehicle without permission or authority. In *Disciplinary Case No. 78493/02*, another 19-year member with no prior disciplinary record forfeited ten suspension days already served, after pleading Guilty to, while on duty in a Manhattan command, wrongfully utilizing an unmarked Department vehicle to travel to Brooklyn to take care of emergency plumbing problems in a building he owned. In *Disciplinary Case No. 82462/06*, a 14-year member with one prior adjudication forfeited seven vacation days for transporting his stepdaughter in a Department vehicle. After signing in at his command, the member used a Department vehicle to drive his stepdaughter to a relative's house located in another borough. As a result, the member was also absent from his assignment for a period of one hour and 15 minutes. In *Disciplinary Case No. 83040/07*, a 15-year member with one prior adjudication forfeited ten vacation days for picking up his girlfriend in a Department vehicle and driving her to her home in the neighboring precinct.

Penalties for failing to obey orders have, in the experience of this Court, run the gamut from 15 days and up. For example, in *Disciplinary Case No. 83402/07*, a 16-year civilian member with one prior disciplinary adjudication forfeited 15 vacation days for failing to comply with an order to report for work at her regularly scheduled tour and another order to report to her commanding officer's office in a timely manner. She did not report to the office until approximately an hour later. In *Disciplinary Case No. 84605/08*, a 15-year detective with no prior disciplinary record negotiated a penalty of 25 vacation days for failing to report to a New Year's Eve detail after being ordered to do so.

The combined nature of the misconduct involved in this case, therefore, would ordinarily start at about 25 days and go up from there depending on the circumstances.

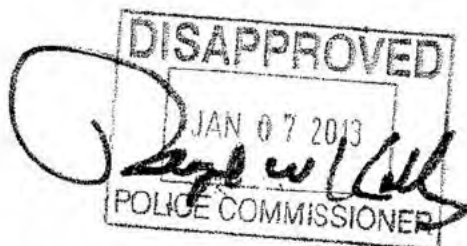
Respondent has set forth as mitigating factors his long years of unblemished service to the Department and what he perceived as the exigencies of the circumstances. It is difficult to see the exigencies of the circumstances. Calling 911 would have made imminently more sense than driving out [REDACTED] to deal with a health emergency. An ambulance and officers from the local precinct could handily have arrived at the scene before Respondent.

Respondent has also argued, through counsel, that he was concerned that Fulford would drive off and pose a danger to herself and the public. But, on cross examination, he was sure Fulford did not drive to work that day and, as the RMP operator, he would have had the key to the RMP. Consequently, it does not seem that there was a real danger that Fulford would drive off in any vehicle by herself.

Respondent certainly deserves some credit for concern he showed for his partner but that concern was clearly misapplied under the circumstances.

The Department has already given consideration to the truly mitigating factors in this case and has recommended a penalty that is less than would otherwise apply. In this case I concur with the Advocate and recommend a penalty involving the loss of 20 vacation days.

Respectfully submitted,




Martin G. Karopkin
Deputy Commissioner – Trials

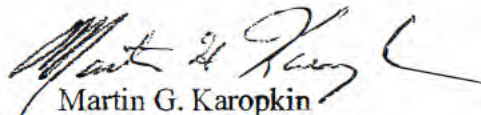
POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER SCOTT MCMASTER
TAX REGISTRY NO. 893367
DISCIPLINARY CASE NO. 2010-2997

In 2011, Respondent received an overall rating of 4.0 Highly Competent” on his annual performance evaluation. He was rated 3.5 “Highly Competent/Competent” in 2009 and 2010. He has been awarded

[REDACTED] formal

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials